

DEC 7, 2015

CENTRAL DISTRICT OF CALIFORNIA

BY: vdr DEPUTY

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PHILLIP SHIN,)	CASE NO. CV 15-9311-FMO (PJWx)
)	
Plaintiff,)	ORDER DENYING DEFENDANT'S MOTION
)	TO PROCEED <i>IN FORMA PAUPERIS</i> AND
v.)	REMANDING CASE TO SUPERIOR COURT
)	
BILLY SO, DOES 1 TO 10,)	
)	
Defendants.)	
_____)	

Before the Court is Defendant Billy So's motion to proceed *in forma pauperis* ("IFP"). For the following reasons, the motion is DENIED and the action is remanded to the Los Angeles County Superior Court.

On December 2, 2015, Defendant, proceeding *pro se*, lodged a Notice of Removal, accompanied by a request to proceed IFP, seeking to remove this unlawful detainer action from state court. The Court has denied the IFP application under separate cover. To prevent the action from remaining in jurisdictional limbo, however, the Court also issues this Order, remanding the case back to the Superior Court.

Simply stated, because Plaintiff could not have brought this action in federal court in the first place, there is no basis to remove it. To the extent that Defendant is seeking to federalize the

1 case by raising federal claims in his defense, he cannot do so. The
2 Court considers only the claims raised in the Complaint to determine
3 whether there is federal jurisdiction and does not take into account
4 any federal defenses or counterclaims Defendant raised (or could have
5 raised). *Phillips Petroleum Co. v. Texaco, Inc.*, 415 U.S. 125, 127
6 (1974) (explaining federal questions must be disclosed on the face of
7 the complaint as a defendant's reply is not a basis for federal
8 jurisdiction); *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241,
9 1244 (9th Cir. 2009) (explaining federal law defense does not create
10 federal jurisdiction if the complaint on its face does not present
11 federal question).

12 Plaintiff's unlawful detainer action does not raise a federal
13 question. See 28 U.S.C. § 1331. Additionally, the amount in
14 controversy is less than \$10,000 and, according to Defendant,
15 Plaintiff and Defendant are California residents. See Civil Cover
16 Sheet at 1. Thus, there is no diversity jurisdiction. See 28 U.S.C.
17 § 1332. For these reasons, the case is subject to remand. 28 U.S.C.
18 § 1441(a); *Exxon Mobil Corp v. Allapattah Svcs., Inc.*, 545 U.S. 546,
19 563 (2005).

20 Accordingly, IT IS ORDERED that: (1) this matter is REMANDED to
21 the Superior Court of California, Los Angeles County, 111 N. Hill
22 Street, Los Angeles, California, 90012, (2) the clerk shall send a
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1 certified copy of this Order to the Superior Court and serve copies on
2 the parties.

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4 IT IS SO ORDERED.

5 DATED: December 7, 2015
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8 /s/
FERNANDO M. OLGUIN
UNITED STATES DISTRICT JUDGE
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15 Presented by:

16 *Patrick J. Walsh*
17

18 PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE
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